HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
Chapter VIII Rule 32 (2) (b)

Description of the Case.

Writ petition no. 1279 (M/S 2003

Anil S/o Sri Vikram Singh.
And thirteen others ....Petitioner.

Vs.

Assistant Labour Commissioner Haridwar,
And another. ....Respondents

Approved for reporting.
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~~Not approved for reporting~~

Date of Decision 27th September 2004.

Initial of Judge.

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HIGH COURT OF UTTARANCHAL AT NAINITAL.

Reserved

Writ Petition no. 1279 (M/S) 2003

Anil S/o Sri Vikram Singh.
And thirteen others ....Petitioner.

Vs.

Assistant Labour Commissioner Haridwar,
And another. ....Respondents

Sri V.C. Mishra Ad., Sri V.K. Visht Adv.,
& Sri Lok Pal Singh, learned counsel for the petitioners.
Sri. V.K. Kohli, learned Counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.

By means of this writ petition, the petitioners have prayed for a writ in the nature of certiorari quashing the order dated 1.12.2003 passed by Assistant Labour Commissioner Haridwar, and further to issue writ, in the nature of mandamus commanding the respondents to give employment to the petitioners directly without taking the contractor in between.

The facts, in brief, are that M/s. Bharat Heavy Electricals Limited, Ranipur, Haridwar (for short BHEL) engaged the petitioners are gardeners (Malies) to sweep, clean, maintain and look after the lawns and parks inside the factory premises and the campus of residential colonies. The petitioners were engaged for the purposes, through the agency of S/Sri Malkhan Singh, K.P. Singh Chauhan and Mahendra Singh. Services of the petitioners were terminated without applying the provisions of Section 6N of Industrial Dispute Act 1947 w.e.f. 1.12.1988. The petitioners raised industrial dispute no. 31-44/90 before the Labour Court Dehradun who found termination of the petitioners illegal and accordingly passed an award on 5.7.1996 in favour of the petitioners for reinstatement of the petitioners either through contractors or directly by the BHEL.

Aggrieved by the award, the B.H.E.L. filed a Civil Misc. Writ petition no. 2109 of 1997 in the High Court of Allahabad. When the recovery process was started before the Deputy Labour Commissioner Meerut, the B.H.E.L. obtained stay order

in Civil Misc. writ petition no. 41787/98 and when the Assistant Labour Commissioner, Saharanpur issued notice u/s 14A of U.P.I.D. Act 1947, the B.H.E.L. again approached the High Court, Allahabad by mean of w.p. no. 1654 of 1999 seeking stay of the proceedings u/s 14A of UPID Act. 1947. The Allahabad High Court by a common judgment dated 17.02.1999 dismissed writ petition nos. 2109 of 1997 and 41787 of 1998 and disposed of writ no. 1654 of 1999 holding that the petitioners are employees of B.H.E.L. Aggrieved by the order of High Court, the B.H.E.L. approached Hon'ble Apex Court and the Hon'ble Supreme Court vide its order dated 21.07.2003 dismissed the appeal and has affirmed the order of the High Court of Allahabad. The Hon'ble Supreme Court also dismissed the review petitioner preferred by the B.H.E.L.

Since the BHEL did not provide appointment to the petitioners even after the dismissal of the appeal by the Apex Court as well as the review petition, the petitioners initiated proceedings u/s 14A of the U.P. Industrial Dispute Act 1947 for execution of the orders. The matter was pending before Asstt. Labour Commissioner, consequently the petitioners filed writ no. 1255 of 2003 for a direction to respondents to decide the application of the petitioners.

This Court on 5.9.2003 in writ petition no. 1255 (S/S) 2003 has passed the following order:-

"……..Without entering into the merits of the controversy, the respondent is directed to dispose of the application of the petitioner in accordance with law within a period of four weeks after receiving certified copy of this order. The observations made above, shall not come in the way of the Labour Commissioner to dispose the application of the petitioner on merit. With the above observations, the writ petition is disposed of. There will be no order as to costs."

In compliance of order dated 05.09.2003 passed by this Court, Asstt. Labour Commissioner passed impugned order

dated 01.12.2003, which is under challenge in the present petition.

Asstt. Labour Commissioner, while disposing the application has framed following three issues for determination:-

1. क्या मान0 उच्च न्यायालय इलाहाबाद द्वारा रिट याचिका सं0 41787/98 एवं मा0 उच्चतम न्यायालय द्वारा सिविल अपील संख्या 2459–2461/99 दि0 17.2.99 में सेवायोजक की अपील निरस्त करने के परिणामस्वरूप श्रम न्यायालय, देहरादून के अवार्ड पर संशोधर करने वाला प्रभाव हुआ है।
2. क्या उ0प्र0 औद्योगिक विवाद अधिनियम 1947 की धारा–6एच (1) के अधीन विवादित क्लेम की गणना की जा सकती है।
3. श्रम न्यायालय देहरादून द्वारा दिये गये अभिनिर्णय दिनांक 5.7.96, जो कि दि0 15.11.96 एवं दिनांक 16.12.96 को प्रकाशित हुए तथा पहले मान0 उच्च न्यायालय, इलाहाबाद तथा पुनः मान0 उच्चतम न्यायालय में विचाराधीन और मान0 उच्चतम नयायालय द्वारा सेवायोजकों का रिव्यू प्रार्थना–पत्र दिनांक 30. 10.2003 को निरस्त किये जाने के परिणामस्वरूप न्यायालय में विचाराधीन रहे, किस तिथि से प्रवर्तनीय(Enforceable) माने जायेंगे।

While deciding issue no. 1, the respondent has held that since the Award passed by the Labour Court was upheld by the High Court and the Apex Court has dismissed the appeal filed against the judgment of High Court. Now what is to be implemented is the Award of Labour Court and the Labour Court has not held that the petitioners were employees of BHEL or the petitioners were to be absorbed in the service by the BHEL, as such, as per Award of Labour Court, the petitioners are entitled for reinstatement by the Contractor and in case the Contractor fails to reinstate them, the BHEL should reinstate the petitioners in service. The petitioners are entitled to get the same salary, which they were getting at the time of termination of their services.

Heard Sri V.C. Mishra Senior Advocate assisted by Sri V.K. Visht, & Sri Lok Pal Singh, learned counsel for the petitioners and Sri V.K. Kohli, learned Counsel for the respondents.

Grievance of the petitioners is that after the High Court and Hon'ble the Supreme Court have found the petitioners

employees of the B.H.E.L., the award passed by the Labour Court is merged with the judgment of the High Court and the judgment of High Court has merged with the judgment of Supreme Court. But while passing the order darted 01.12.2003 the Assistant Labour Commissioner has declared the petitioners as contract labour and they are directed to join with the contractors. Not only this, during the proceedings before the Assistant Labour Commissioner, the B.H.E.L. has submitted a letter dated 28.11.2003 stating therein that one Sri K.P. Singh Contractor is ready to re-employ the petitioners as contract labour which is contrary to the orders of the Hon'ble Supreme Court.

It has further submitted by the counsel for the petitioners that there are hundreds of posts of Mali lying vacant in regular capacity in the B.H.E.L. But the Assistant Labour Commissioner has disposed of the application of the petitioners stating therein that the B.H.E.L. has rightly decided to re-employ the petitioners as contract labour. The petitioners have contended that the High Court has recorded a finding in W.P. no. 2109 of 1997 M/s. Bharat Heavy Electicals Ltd. vs. State of U.P. and others as under:-

"...At the very outset, it may be mentioned here that the Labour Court has recorded a finding of fact that 14 workmen had, in fact, been engaged for a period more than 240 days in 12 calendar months, and, therefore, the termination of their services without complying with the provisions of Section 6-N of the Act was illegal. A finding of fact has further been recorded that the workmen had worked under the control of the petitioner and, therefore, the device of employing the contractor, i.e., an intermediary between the workmen and real employer was nothing but an attempt to camouflage the direct relationship of employer and employee between the petitioner and the workmen......"

The aforesaid finding was affirmed by Hon'ble Supreme Court, thus the petitioners for all practical purposes were declared as employees of the B.H.E.L. and Hon'ble Supreme Court has also confirmed it. It has been further submitted that in view of the terms and conditions laid down u/s 25(v) (a) of Contract Labour Regulation and Abolition Rules 1971, it has been described that in case where the workmen employed by the contractor, perform the same of similar kind of work as is done by the workmen directly employed by the principle employer of the establishment, the wage rates, holidays, hours or work and other conditions of the service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principle employer of the establishment for the same and similar kind of work.

On the other hand a counter affidavit has been filed by the respondent no. 2 stating therein that in compliance to the award dated 5.7.1999 the respondent has chosen to employ the petitioners through contractor and at their directions Sri K.P.S. Chauhan, contractor has written letter to all the petitioners asking them to report of duty. Thereafter the respondents had also issued a letter dated 13.1.2004 for reporting for duties to Sri K.P.S. Chauhan within 48 hrs. from the date of service of the said notice.

It has been further contended that since the award dated 5.7.1996 given by Labour Court, Dehradun has become final; hence the allegations have no relevance. The High Court of Allahabad has dismissed the writ petition filed by the respondent no. 2 and Hon'ble Supreme Court has also dismissed the appeal, hence the award has been confirmed. The Hon'ble High Court did not vary the award of Labour Court, Dehradun, hence it is to be implemented, but the petitioners are misinterpreting the matter. The respondent no. 2 has duly complied with the award given by the labour Court but the petitioners are not accepting the employment through contractor.

It has been further Contended that the award of the Labour Court was not challenged by the petitioners, therefore, they cannot raised any plea against the award. The principle of merger does not apply because the writ petition and the appeal preferred by the respondent have been dismissed. Neither the High Court, nor the Hon'ble Supreme Court has directed the respondent no. 2 to employ the petitioner directly and the award passed by the Labour Court was not at all altered or varied. The respondent no. 2 has been given a liberty either to employ the petitioners directly or through contractor. The was also denied by the respondent no. 2 that at the time of termination the petitioners were the employees of the BHEL and they are to be reinstated by BHEL.

Learned counsel for the petitioners Sri. V.C. Mishra has submitted that the doctrine of merger will be applicable in the present case and it is the judgment of the Apex Court which is to be executed. In support of his submissions he has placed reliance on the judgment of Apex Court in the case of **Kunhayammed and others vs. State of Kerala and another reported in 2000 (6) Supreme Court Cases, page 359.**

Hon'ble Supreme Court in the aforesaid case while explaining Doctrine of merger has held in para 12 as under:-

" The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way-whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative

decree or order wherein merger the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

In para-27, the Apex Court has held that in case a petition for leave to appeal is dismissed by a non-speaking order it would not attract the Doctrine or merger but if the order of dismissal is supported by reasons then also the Doctrine of merger would not be attracted because the jurisdiction exercised was not an Appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. Still the reasons stated by the Court would attract applicability of Art. 141 of the Constitution, if there is a law declared by the Hon'ble Supreme Court which obviously would be binding on all the Courts and Tribunals in India and certainly the parties thereto. The Apex Court in para-41 has held that once leave to appeal is granted, any order passed thereafter would be an Appellate order and would attract the applicability of Doctrine of merger. It would not make a difference whether the order is of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking order or non speaking one.

The Apex Court has sum up by giving conclusion in para – 44 which reads as under:-

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modified, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) *The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second state commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.*

(iii) *……..The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine or merger can therefore be applied to the former and not to the latter.*

(iv) *…..*

(v) *If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant to leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever, is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by was of judicial discipline, the Supreme Court being the Apex Court of the country……..*

(vi) *Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.*

(vii) …….

I find force in the submissions of learned counsel for the petitioners. Against the Award of Labour Court the respondent filed writ petition, which was dismissed. Against the dismissal of the writ petition by the High Court, the respondent approached Hon'ble Supreme Court and the Apex Court dismissed Civil Appeal no. 2459-2461 of 1999 by its judgment dated 21.07.2003. Since the Apex Court has exercised Appellate jurisdiction and has dismissed the appeal, on merit, after hearing both the parties, the Doctrine of merger would attract.

The Hon'ble Apex Court in the present case has recorded findings that *"It is not possible for us to hold that such concurrent findings recorded by the Labour Court and the High Court that the workmen were to be treated as the employees of the appellant are either perverse or based on no evidence or untenable at all."*

In view of above findings, the workmen were to be treated as the employees of the appellant.

On the other hand, learned counsel for the respondents Sri V.K. Kohli has place reliance on the judgment of **Apex Court reported in AIR 1967 Supreme Court, page 681 (V 54 C 146) State of Madras vs. Madurai Mills Co. Ltd.** wherein the Hon'ble Supreme court in para-6 has held as under:-

"…….But the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior Tribunal and the other by a superior Tribunal, passed in an appeal or revision, there is a fusion or merger of two orders irrespective of the subject-matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. In our opinion, the application of the doctrine depends on the nature of the appellate or revisional order in each case

and the scope of the statutory provisions conferring the appellate or revisional jurisdiction.……..…..”

The Apex Court in the case of **Kunhayammed and others** (Supra) has discussed the aforesaid citation.

The respondent cannot take benefit of the authority cited above. As already stated above in the present case, the Apex Court has exercised its Appellate jurisdiction by dismissing the appeal after recording findings.

Sri V.K. Kohli, learned counsel for the respondent has further submitted that in any case the Hon’ble Supreme Court has not modified the order of the Labour Court or the High Court and mere observations made in the judgment cannot be looked, on the contrary it is the ratio which has been decided by the Supreme Court is to be looked. I do not find force in the submission of learned counsl for respondent that the observation made in the judgment cannot be looked into for the reasons that in the present case it is not merely an observation of the Apex Court but the Apex Court has recorded findings.

In the present case, the Labour Court while passing the award had framed certain issues. One of the issues is issues no. 3 to the effect that “Whether opposite party no. 1 is not employer of the petitioner?” While deciding the aforesaid issue, the Labour Court has recorded a finding as under:-

‘‘अति0 वाद बिन्दु सं0 तीनः– सेवायोजक सं0 1 के विद्वान प्रतिनिधि ने यह तर्क दिया कि चूंकि वे सभी श्रमिक ठेकेदार द्वारा नियोजित किये गये थे, जैसा कि श्रमिक पक्ष को भी स्वीकार है अतः सेवायोजक सं0 1 का इनके प्रति कोई दायित्व नहीं बनता है। उन्होंने अपने तर्क के समर्थन में मान0 उच्चतम न्यायालय द्वारा इंडिया जनरल नैवीगेशन एण्ड रेलवे कं0 लि0 व अन्य बनाम श्रमिक गण में दि0 28.10.1965 (1966)(12) एफ एस आर 223– 1966 (1) एल एल जे 7351 को दिये गये निर्णय को हवाला दिया जिसमें कॉन्ट्रेक्ट लेबर को कम्पनी द्वारा नियोजित श्रमिक न मानते हुए यह कहा गया कि ऐसे श्रमिक कम्पनी से किसी रिलीफ पाने के अधिकारी नहीं है। उन्होनें मान0 उच्च न्यायालय राजस्थान द्वारा दिल्ली क्लाथ एण्ड जनरल मिल्स लि0 बनाम राजस्थान सरकार में दि0 22. 10.91 का दिये गये निर्णय (1994–1 सी एल आर 65) व मद्रास हाईकोर्ट द्वारा अशोक लीलैण्ड बनाम तमिलनाडु सरकार में दि0 5.1.90 को दिये गये निर्णय (1992(2) सी एल

आर 712) का भी हवाला दिया जिसमें कहा गया है कि कॉन्ट्रेक्ट लेबर के मामले में कम्पनी के विरूद्ध संदर्भित नहीं किया जा सकता ।

मेरे समक्ष विचाराधीन इन विवादों में प्रस्तुत साक्ष्य से जो तथ्या प्रकट हुए है, वे बिल्कुल भिन्न है। रामस्वरूप जो सेवायोजक सं01 के अधीन हैड माली है के बयानों से प्रकट होता है कि यद्यपि संबंधित श्रमिक ठेकेदार द्वारा काम पर लगाये गये थे परन्तु उनसे काम वही हैड माली की हैसियत से लेता था व काम वही देखता था, ठेकेदार केवल वेतन देता था व इनकी हाजरी एक अलग रजिस्टर में दूसरा हैड माली साधूराम पूर्ण करता था तथा वह रजिस्टर मैनेजर श्री वार्ष्णेय ने फड़वा दिया था ताकि सबूत न रहे व रजिस्टर फाड़ने के बाद श्रमिक हटा दिये गये थे। इनसे प्रकट होता है कि सेवायोजक सं0 1 का वादी श्रमिकों के उपर नियंत्रण था तथा वे पूर्णतः ठेकेदार के ही श्रमिक नहीं कहे जा सकते। ऐसा लगता है कि उ0प्र0 औद्योगिक विवाद अधिनियम के दायरे से उनको बाहर रखने के उद्देश्य से यह तरीका अपनाया गया कि उनसे काम से सेवायोजक के कर्मचारी लें पर वेतर भुगतान ठेकेदार द्वारा किया जाना दिखाया जाए। ठेकेदार श्री के.पी.एस. चौहान के बयानों से प्रकट होता है कि उसके पास बी.एच.ई.एल. में अभी भी ठेके पर काम है (सीवर पाईप लाइन डालने का)। सेवायोजक सं0 1 द्वारा दाखिल श्रमिकों की इस संबंध में की गई शिकायतों से भी इस बात की पुष्टि होती है। श्रमिक विनोद कुमार के बयानों के अनुसार हाजरी रजिस्टर के फाड़े जाने के पूर्व श्रमिक हैड माली से इसे लेकर इसकी फोटो प्रतियां करा चुके थे जो न्यायालय में श्रमिक पक्ष ने दाखिल की है।

सेवायोजक सं.1 व 2 दोनों द्वारा श्रमिककों की हाजरी से संबंधित अभिलेख दाखिल न किया जाना व इनका नष्ट कर दिया जाना व श्रमिक पक्ष द्वारा ही इनकी छाया प्रतियॉ दाखिल करना सिद्ध करता है कि सेवायोजक सं01 भी इन श्रमिकों की अवैध सेवा समाप्ति के दायित्व से बच नहीं सकते। अतः यह निर्णय दिया जाता है कि विपक्षी सं01 भी वादी श्रमिकों के सेवायोजक है, चाहे प्रमुख सेवायोजक ही सही।''

However, in the operative portion of the award, the Labour Court directed the B.H.E.L. to reemploy the petitioners as directly through B.H.E.L. or through the contractor and in the case of failure, the BHEL shall be responsible to reinstate the petitioners.

The aforesaid award was challenged by the B.H.E.L. before the High Court and the High Court while disposing the writ petition, has recorded its finding as under:-

"....There is no dispute about the fact that the respondent – workmen were engaged for working as gardeners in the factory promises, campus and residential colony of the petitioner. Ram Sahai, Head Mali was admittedly employed by the petitioner. It was he, who used to supervise the work of

the respondent nos. 6 to 19. Another employee of the petitioner was Head Mali Sadhu Ram. It was he, who used to maintain the record of attendance of the workmen. It has come in evidence that Sadhu Ram used to keep the record of the attendance of the respondent-workmen and that when a dispute arose consequent upon their disengagement, eh destroyed the same by tearing it off at the instance of one Varshney who was the Manager in the petitioner-establishment. If the workmen were, in fact, engaged by independent contractors, the record of their attendance should have been maintained by them and the control and supervision on the duties performed by the 14 persons should, in all probability, have been that of the independent contractors. In view of the positive findings of fact recorded by Labour Court that the petitioner had control and supervision over the work and duties to be performed by the respondents-workmen and that the record of their attendance was being maintained by the employees of the petitioner, there can be no escape from the conclusion that the respondent-workmen were under the direct employment, supervision and control of the petitioner. Sometimes, the employers, with a view to get over stringent provisions and prescriptions of the labour law, resort to a device to engage the workmen through some intermediary. Such an arrangement has to be termed as artificial and not real……."

The High Court has further held as under:-

"…….The findings of facts recorded by the Labour court cannot be scrutinized or sifted in this writ petition. The tone and tenor of the employment of the respondent-workmen makes it amply clear that they were, for all practical purpose, were the employees of the petitioner. The petitioner had retained direct control over the work and the duties of the respondent-workmen. The attendance of the workmen was also recorded by an employee of the petitioner. The

involvement of the alleged direct contractors was merely a figurative. The engagement of the contractor was sham and not genuine. Therefore, if the fictitious agency, which was brought into existence as a device to camouflage the status of the respondent-workmen, is ignored, they would be treated to be in the direct employment of the petitioner……..”

The High Court has also taken note of the fact that it cannot be forgotten that the petty workmen are generally pitted against a mighty employer. The workmen find it difficult to ventilate their grievances against all powerful employer. The workmen are kept out of job to endless keep waiting for award and thereafter, resulting in further litigation and delay in enforcement of their rights. The management would always keep the workmen at bay by denying them absorption.

In the operative portion, the High Court while dismissing the writ petition nos. 2109 of 1997 and 41787 of 1998 disposed of writ petition no. 1654 of 1999 and stayed the proceedings agasint the B.H.E.L. u/s 14-A of the Act provided the B.H.E.L. deposits a sum of Rs. 2,17,000/- with the Deputy Labour Commissioner within a period of one month.

Aggrieved with the order of High Court, the petitioner preferred appeals before the Hon’ble Supreme Court which were numbered as 2459- 2461 of 1999. These appeals were dismissed after hearing the parties by the Hon’ble Supreme Court vide judgment dated 21st July 2003. The Hon’ble Supreme Court had held that the Labour Court on the basis of the evidence concluded that the appellant was the principal employer. The Hon’ble Supreme Court has also quoted the finding of Labour Court as under:-

“From the statements of Ram Swarup who is Head Mali under Employer no.1, it appears that though the concerned workers were employed at work by the contractor but he himself used to take work from them in the capacity of Head Gardener and he also used to look after their work. The

contractor used to pay salary only and their attendance were used to be marked in a separate Register by another Head Gardener Sadhu Ram and the Register was got torn by Manager Shri Varshney so that no proof may remain and after tearing of register, workers were removed. From these, it appears that employer no, 1 had control over the plaintiff worker and they cannot be said to be the workers only of the contractor. It appears that with the object to keep them out of the ambit of U.P. Industrial Dispute Act, this method was adopted that work was taken from them by the employee of the employer and payment should be shown to have been made by the contractor. From the statements of Shri K.P.S. Chauhan, contractor, it appears that he still has work contract in BHEL (Laying of Sever Pipe Line). From the complaints made by workers in this record this fact is confirmed. As per the statements of worker Vinod Kumar, before tearing of the Atendance Register, workers had got photocopies of these done by taking these registers from Head Mali which copies have been filed by the worker party in the Court.

Not filing the records concerning the attendance of workers by both employer no.1 and 2 and destroying the same and filing of photocopies of the same by the worker party prove that employer no. 1 can also not escape from the liability of illegal termination of services of these workers. Hence, it is decided that the Respondent no. 1 is also the employer of plaintiff-workers, though principal employer…….."

The Hon'ble Supreme Court has further held that "*Thus, considering the evidence, the facts and circumstances of the case and findings of fact recorded by the Labour Court, the High Court held that the workmen were under the directed employment, supervision and control of the appellant observing that sometimes, the employers, with a view to get over stringent provisions of the labour law, resort to engage the workmen through some intermediary and such an arrangement has to be termed as artificial.*

x x x

We have no good reason or valid ground to upset the concurrent finding of fact recorded by the Labour Court as affirmed by the High Court in this regard.

x x x

This apart, the finding that the respondents/ workmen were the employees of the appellant, does not rest merely on the test of control. The other evidence and facts and circumstances of the case were also kept in mind in recording such a finding including a vital fact that the appellant did not produce the records alleging that they were not available which led to drawing adverse inference against them. It is not possible for us to hold that such concurrent findings recorded by the Labour Court and the High Court that the workmen were to be treated as the employees of the appellant are either perverse or based on no evidence or untenable at all."

The Hon'ble Supreme Court has affirmed the findings recorded by the Labour Court as well as the High Court. As discussion above, against the Award of Labour Court, writ petition was filed before the High Court by the respondent which was dismissed. Aggrieved by the order of High Court, the respondent approached Hon'ble the Supreme Court and the Apex court has also, in its Appellate jurisdiction, dismissed the appeal. Thus, since the Apex Court has exercised its Appellate jurisdiction and has dismissed the appeal on merit, after recording findings, the judgment of lower Court merges with the judgment of Hon'ble Supreme Court. The Hon'ble Supreme Court has recorded a finding that " *It is not possible for us to hold that such concurrent findings recorded by the Labour Court and the High Court that the workmen were to be treated as the employees of the appellant are either perverse or based on no evidence or untenable at all.*" The aforesaid findings contained in the order is a declaration of law by the Hon'ble Supreme Court within the meaning of Article 141 of the Constitution of India even otherwise whatever is stated in the

order are the findings recorded by the Hon'ble Supreme Court which would bind upon the parties thereto and also to the Court. Tribunal or Authorities in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the Country.

For the reasons stated above, the writ petition is allowed. The impugned order dated 01.12.2003, passed by the Labour Court is hereby quashed. The respondent no. 2 is directed to reinstate the petitioners in service directly, in view of the findings recorded by the High Court confirmed by the Apex Court.

(M.M. Ghildiyal, J.)

September 27, 2004:
NCM: